

In the Matter of )  
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Wireless Telecommunications Bureau Seeks ) WT Docket No. 06-203  
Comment on Topics to be Addressed in )  
Hearing Aid Compatibility Report )  
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<sup>3</sup> See 47 C.F.R. 20.19(c)(1)(ii), (c)(2)(ii), (c)(3)(ii); Comments of Cingular Wireless LLC (“Cingular”) (filed Jan. 12, 2007); Comments of the Alliance for Telecommunications Industry Solutions (“ATIS”) on behalf of the ATIS Incubator Solutions program #4-Hearing Aid Compatibility (filed Jan. 12, 2007); Comments of Sony Ericsson (filed Jan. 12, 2007).

who are simply unable to impact the ability, or have any remedy for the failure, of manufacturers to provide compliant handsets in time to enable all Tier II and III carriers to meet these requirements. Dobson agrees with ATIS and Cingular that the Commission should modify the requirements to levels that are appropriate to, and likely to be achievable by, manufacturers and different-sized GSM carriers. To do otherwise will significantly impair the ability of GSM carriers to compete in the marketplace and will artificially decrease the handset and service choices available to all consumers.

Since 2003, when the Commission modified the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (“HAC Act”) to require that manufacturers and carriers offer hearing aid-compatible (“HAC”) digital wireless phones, the wireless industry, working with the hearing impaired community, has expended substantial resources and made great strides to meet the Commission’s HAC requirements to date.<sup>4</sup> The comments filed in this proceeding, and the November 2006 status reports filed by handset manufacturers and carriers, clearly show that those customers with hearing aids have greater access to a variety of digital phones available from both Code Division Multiple Access (“CDMA”) and GSM-based carriers that are compatible with hearing aids.<sup>5</sup> Moreover, the industry remains committed to developing and offering an ever increasing assortment of HAC phones in a variety of price ranges that include advanced and innovative features.

Notwithstanding these efforts, technical and practical implementation concerns have been identified with the ability of manufacturers of GSM handsets to supply a significant number of

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<sup>4</sup> *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, *Report and Order*, 18 FCC Rcd 16753 (2003) (“*HAC Order*”), modified in part on recon., *Memorandum Opinion and Order*, 20 FCC Rcd 15108 (2005).

<sup>5</sup> See ATIS Comments at 13-15; Cingular Comments at ATIS, *Hearing Aid Compatibility Compliance Efforts, Status Report #6*, WT Docket 01-309, Attachment A (filed Nov. 17, 2006). Dobson is a member of the incubator group, and its individual status report accompanies ATIS’ November filing.

HAC compliant models by February 18, 2008. As a result, under the current rule, GSM service providers will be hard pressed to meet the 50% benchmark without reducing – potentially to a significant degree – the number of handsets they can offer to the public. According to the November 2006 status reports, around 80% of the CDMA phones offered by manufacturers and over 50% of the CDMA phones offered by carriers met the minimum M3-rating.<sup>6</sup> In contrast, only 22% of the GSM phones offered by manufacturers met the M3 threshold.<sup>7</sup> As ATIS and Cingular explain, making GSM phones HAC compliant has proven to be more difficult because of the higher output levels, different modulation scheme, and Articulation Weighting Factor used in GSM technology.<sup>8</sup>

The problem is exacerbated, as Cingular has noted, because consumers are trending towards “candy bar” shaped phones (*i.e.*, smart phones/Personal Digital Assistants) and ultra-thin phones with metal casings that are not conducive to achieving HAC compliance, particularly for GSM handsets.<sup>9</sup> While manufacturers may be able to produce several GSM handset models in a clamshell design, increasing the likelihood that GSM carriers would have a sufficient number of phone types to meet the 50% benchmark, GSM carriers’ handset lines would be dominated by designs that a substantial portion of the public is abandoning, putting an artificial restriction on the number of phone models designed to satisfy the larger consumer demand.<sup>10</sup> This approach would necessarily impact the ability of GSM carriers to compete in the marketplace, potentially

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<sup>6</sup> See ATIS Comments at 14.

<sup>7</sup> See *id.* at 15.

<sup>8</sup> See *id.* at 17-29; Cingular Comments at 7-8.

<sup>9</sup> See ATIS Comments at 21-23, 25-29.

<sup>10</sup> As ATIS correctly states, “[w]ithout some correction to the current regulations on HAC compliance, manufacturers and service providers will be forced to develop and deploy large, unattractive handsets with undesirable form factors as part of their market portfolio that will not be marketable nor meet the needs of the hearing impaired community.” See ATIS Comments at 22.

skewing an otherwise vigorous competitive market for wireless services to the further long-term detriment of consumers in terms of innovation and service improvements.

Most significantly, the concerns raised by ATIS and Cingular are even more acute for Tier II and III carriers that lack purchasing power to dictate the development of HAC handsets by manufacturers, have lower priority in terms of distribution of newer models, and typically have access to a smaller pool of HAC handset designs due to manufacturers having exclusive arrangements with larger carriers for some new models. When a Tier I carrier has difficulty achieving compliance with a benchmark on a timely basis, the problems are magnified for smaller carriers, particularly those with GSM technology. The wireless industry has worked hard to meet the Commission's HAC obligations to date, but certain key principles upon which the Commission relied when it eliminated the HAC Act's exemption for wireless phones are no longer true with respect to meeting the 50% benchmark.<sup>11</sup> Accordingly, the Commission should modify the benchmark downward and in a manner that reflects the differences among carriers of varying sizes.<sup>12</sup>

Finally, Dobson urges the Commission to recognize marketplace dynamics and to stagger any upcoming deadline imposed on carriers so that it would occur at least six months later than any deadline imposed on handset manufacturers. Such staggering of deadlines is necessary to allow sufficient time for carriers to test, obtain, and stock handsets in their stores. Dobson's past experience with the September 2005 and 2006 deadlines for offering M- and T-rated handsets shows that manufacturers inevitably first offer certified handsets immediately prior to or on the

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<sup>11</sup> For example, although the FCC adopted technical requirements applicable across all transmission technologies, it did not anticipate the impact on form factors and handset core design and that the marketability of HAC compliant devices would be adversely affected. *See HAC Order*, 18 FCC Rcd at 16774-75, 16783-84 ¶¶ 49, 51, 76, 78; ATIS Comments at 10; Cingular Comments at 11.

<sup>12</sup> Dobson understands that a working group within ATIS has been working with consumer groups to address the issues relating to the 50% benchmark requirement. Dobson supports those efforts and urges further that any modifications to the rule address the circumstances facing Tier II and Tier III carriers.

deadline date. While this approach allows the manufacturers to meet their obligations, carriers like Dobson have had insufficient time meet their own deadlines. Indeed, Dobson and other similarly situated carriers have had to seek limited waivers for additional time to test and obtain compliant handsets that were only made commercially available as the deadline approached or even after the deadline had passed.<sup>13</sup> While Dobson has endeavored to comply with the HAC requirements and is currently in compliance, the problems experienced by Dobson could have been avoided altogether if the deadlines of manufacturers and carriers were staggered at least six months apart.

### **CONCLUSION**

For the reasons stated above, the Wireless Telecommunications Bureau ("Bureau") should recommend to the Commission that it modify the 50% benchmark requirement downward to make it more readily achievable by manufacturers and GSM carriers. Dobson also urges the Bureau to propose a modification of the rules so that with any future deadline, the carrier's deadline occurs at least six months later than the manufacturer's deadline.

Respectfully submitted,

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<sup>13</sup> See *Public Notice*, "Modification of Ex Parte Status of Pending Petitions for Waiver of Hearing Aid Compatibility Requirements," WT Docket No. 01-309, DA 07-102, Appendix A (rel. Jan. 18, 2007) (listing several petitions for waiver of the 2005 and 2006 deadlines, including Dobson's).